

§ 230.135d

release or a written communication directed to security holders or employees, as the case may be, or other published statements.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, in the case of a rights offering of a security listed or subject to unlisted trading privileges on a national securities exchange or quoted on the NASDAQ inter-dealer quotation system information with respect to the interest rate, conversion ratio and subscription price may be disseminated through the facilities of the exchange, the consolidated transaction reporting system, the NASDAQ system or the Dow Jones broad tape, provided such information is already disclosed in a Form 8-K (§ 249.308 of this chapter) on file with the Commission, in a Form 6-K (§ 249.306 of this chapter) furnished to the Commission or, in the case of an issuer relying on § 240.12g3-2(b) of this chapter, in a submission made pursuant to that Section to the Commission.

(d) The issuer shall file any notice contemplated by this section with the Commission under cover of Form 8-K (§ 249.308 of this chapter) or furnish such notice under Form 6-K (§ 249.306 of this chapter), as applicable, and, if relying on § 240.12g3-2(b) of this chapter, shall furnish such notice to the Commission in accordance with the provisions of that exemptive Section.

[59 FR 21649, Apr. 26, 1994]

§ 230.135d [Reserved]

§ 230.135e Offshore press conferences, meetings with issuer representatives conducted offshore, and press-related materials released offshore.

(a) For the purposes only of Section 5 of the Act (15 U.S.C. 77e), an issuer that is a foreign private issuer (as defined in § 230.405) or a foreign government issuer, a selling security holder of the securities of such issuers, or their representatives will not be deemed to offer any security for sale by virtue of providing any journalist with access to its press conferences held outside of the United States, to meetings with issuer or selling security holder representatives conducted outside of the United States, or to written press-related materials released outside the United

17 CFR Ch. II (4-1-03 Edition)

States, at or in which a present or proposed offering of securities is discussed, if:

(1) The present or proposed offering is not being, or to be, conducted solely in the United States;

NOTE TO PARAGRAPH (A)(1): An offering will be considered not to be made solely in the United States under this paragraph (a)(1) only if there is an intent to make a bona fide offering offshore.

(2) Access is provided to both U.S. and foreign journalists; and

(3) Any written press-related materials pertaining to transactions in which any of the securities will be or are being offered in the United States satisfy the requirements of paragraph (b) of this section.

(b) Any written press-related materials specified in paragraph (a)(3) of this section must:

(1) State that the written press-related materials are not an offer of securities for sale in the United States, that securities may not be offered or sold in the United States absent registration or an exemption from registration, that any public offering of securities to be made in the United States will be made by means of a prospectus that may be obtained from the issuer or the selling security holder and that will contain detailed information about the company and management, as well as financial statements;

(2) If the issuer or selling security holder intends to register any part of the present or proposed offering in the United States, include a statement regarding this intention; and

(3) Not include any purchase order, or coupon that could be returned indicating interest in the offering, as part of, or attached to, the written press-related materials.

(c) For the purposes of this section, *United States* means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

[62 FR 53954, Oct. 17, 1997]

§ 230.136 Definition of certain terms in relation to assessable stock.

(a) An *offer*, *offer to sell*, or *offer for sale* of securities shall be deemed to be made to the holders of assessable stock

of a corporation when such corporation shall give notice of an assessment to the holders of such assessable stock. A sale shall be deemed to occur when a stockholder shall pay or agree to pay all or any part of such an assessment.

(b) The term *transactions by any person other than an issuer, underwriter or dealer* in section 4(1) of the Act shall not be deemed to include the offering or sale of assessable stock, at public auction or otherwise, upon the failure of the holder of such stock to pay an assessment levied thereon by the issuer, where the offer or sale is made for the purpose of realizing the amount of the assessment and any of the proceeds of such sale are to be received by the issuer. However, any person whose functions are limited to acting as auctioneer at such an auction sale shall not be deemed to be an underwriter of the securities offered or sold at the auction sale. Any person who acquires assessable stock at any such public auction or other sale with a view to the distribution thereof shall be deemed to be an underwriter of such assessable stock.

(c) The term *assessable stock* means stock which is subject to resale by the issuer pursuant to statute or otherwise in the event of a failure of the holder of such stock to pay any assessment levied thereon.

[24 FR 6386, Aug. 8, 1959]

§ 230.137 Definition of “offers”, “participates”, or “participation” in section 2(11) in relation to certain publications by persons independent of participants in a distribution.

The terms *offers*, *participates*, or *participation* in section 2(11) of the Act shall not be deemed to apply to the publication or distribution of information, opinions or recommendations with respect to the securities of a registrant which is required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 and proposes to file, has filed or has an effective registration statement under the Securities Act of 1933 if—

(a) Such information, opinions, and recommendations are published and distributed in the regular course of its business by a broker or dealer which is not and does not propose to be a partic-

ipant in the distribution of the security to which the registration statement relates; and

(b) Such broker or dealer receives no consideration, directly or indirectly, in connection with the publication and distribution of such information, opinions or recommendations from the registrant, a selling security holder or any participant in the distribution or any other person interested in the securities to which the registration statement relates, and such information, opinions or recommendations are not published or distributed pursuant to any arrangement or understanding, direct or indirect, with such registrant, underwriter, dealer, or selling security holder; *Provided, however*, That nothing herein shall forbid payment of the regular subscription or purchase price of the document or other written communication in which such information, opinions or recommendations appear.

(Secs. 6, 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 109, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; 15 U.S.C. 77f, 77g, 77j, 77s(a))

[49 FR 37573, Sept. 25, 1984]

§ 230.138 Definition of “offer for sale” and “offer to sell” in sections 2(10) and 5(c) in relation to certain publications.

(a) Where a registrant which meets the requirements of paragraph (c)(1), (c)(2) or (c)(3) of this section proposes to file, has filed or has an effective registration statement under the Act relating solely to a nonconvertible debt security or to a nonconvertible, nonparticipating preferred stock, publication or distribution in the regular course of its business by a broker or dealer of information, opinions or recommendations relating solely to common stock or to debt or preferred stock convertible into common stock of such registrant shall not be deemed to constitute an offer for sale or offer to sell the security to which such registration statement relates for purposes of sections 2(10) and 5(c) of the Act (15 U.S.C. 77a *et seq.*) even though such broker or dealer is or will be a participant in the distribution of the security to which such registration statement relates.

(b) Where a registrant which meets the requirements of paragraph (c)(1),